

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

- I. THE APPLICATION OF METRO MOBILE CTS OF)
POWELL, INC., A KENTUCKY CORPORATION,)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
DOMESTIC PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE PUBLIC)
IN THE KENTUCKY RURAL SERVICE AREA WHICH)
INCLUDES POWELL, ESTILL, WOLFE, LEE,)
JACKSON, OWSLEY, BREATHITT, PERRY,)
KNOTT, AND LETCHER COUNTIES IN KENTUCKY;)
FOR APPROVAL OF FINANCING; AND FOR)
ESTABLISHMENT OF INITIAL RATES)
)

- II. THE JOINT APPLICATION OF METRO MOBILE)
CTS OF POWELL, INC. AND ALPHA CELLULAR)
TELEPHONE COMPANY, A FLORIDA GENERAL)
PARTNERSHIP, FOR THE TRANSFER OF ASSETS)
AND LIABILITIES OF METRO MOBILE CTS OF)
POWELL, INC. TO ALPHA CELLULAR TELEPHONE)
COMPANY AND OF RELATED FINANCING)
)

CASE NO.
91-410

O R D E R

This matter arising upon petition of Metro Mobile CTS of Powell, Inc. ("Metro Mobile") and Alpha Cellular Telephone Company ("Alpha Cellular") filed March 19, 1992 for confidential protection of certain financial documents filed in support of the application for a Certificate of Public Convenience and Necessity filed by Metro Mobile and the joint application of Metro Mobile and Alpha Cellular on the grounds that disclosure of the information is likely to cause Metro Mobile and Alpha Cellular competitive injury, and it appearing to this Commission as follows:

Metro Mobile has applied for a Certificate of Public Convenience and Necessity to operate a cellular radio telecommunications system in the Kentucky Rural Service Area which serves Powell, Estill, Wolfe, Lee, Jackson, Owsley, Breathitt, Perry, Knott, and Letcher counties. Metro Mobile and Alpha Cellular have further applied for permission to transfer the assets of Metro Mobile to Alpha Cellular and, in support of their application, have filed copies of the Working Capital Note and Purchase Price Note (Exhibit 24); the Loan Agreement, Mortgage, Pledge and Escrow Agreement, and System Sale Agreement (Exhibit 25); the Schedule of Estimated Draws and Amortization Schedule (Exhibit 26); the Equipment Purchase Orders and Related Materials (Exhibit 27); the Executed Purchase Agreement (Exhibit 31); and the Switch Sharing Agreement (Exhibit 33). Of these documents, Metro Mobile and Alpha Cellular seek to protect as confidential the Working Capital Note and Purchase Price Note, the Loan Agreement, the System Sale Agreement, and the Schedule of Estimated Draws and Amortization Schedule on the grounds that disclosure of the information is likely to cause them competitive injury.

The information sought to be protected is not known outside of the businesses of Metro Mobile and Alpha Cellular and is generally not known by their employees except on a need-to-know basis. Metro Mobile and Alpha Cellular seek to protect and preserve the confidentiality of the information through all appropriate means.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 10 categories of information. One category exempted in subparagraph (b) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Only information which is confidential is entitled to protection. To the extent that the information is presently available from other sources, it must be maintained for public inspection. While the documents sought to be protected in this case may be confidential, the same information contained in those documents can be derived from the mortgage which will be recorded in the county court clerk's office. Therefore, the information is not confidential and not entitled to protection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

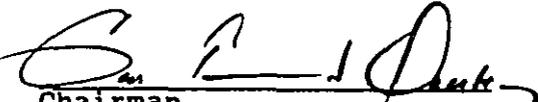
1. The petition to protect as confidential certain financial documents filed in support of the application of Metro

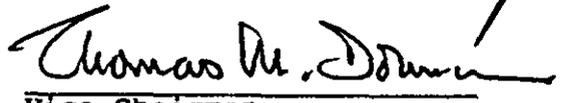
Mobile and the joint application of Metro Mobile and Alpha Cellular be and is hereby denied.

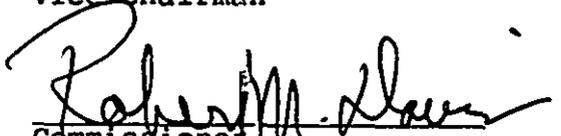
2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record.

Done at Frankfort, Kentucky, this 22nd day of April, 1992.

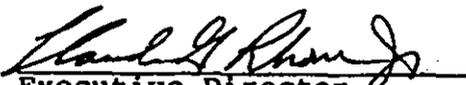
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director